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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/473,196	12/13/1999	Mark H. Sanders	4077-DIV-REI	9700	
30031 75	590 01/26/2004		EXAMINER		
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL			ISABELLA, DAVID J		
RESPIRONICS	•	ART UNIT	PAPER NUMBER		
MURRYSVILLE, PA 15668			3738	\$1	
			DATE MAILED: 01/26/2004	<b>7</b> 7	

Please find below and/or attached an Office communication concerning this application or proceeding.

	· Av .	Applicat	ion No.	Applicant(s)				
		09/473,1	96	SANDERS, MARK H.	SANDERS, MARK H.			
	Office Action Summary	Examine	or	Art Unit				
		DAVID J	ISABELLA	3738				
Period fo	The MAILING DATE of this communic or Reply	ation appears on th	e cover sheet w	ith the correspondence address				
THE   - Exte after - If the - If NC - Failu - Any I	ORTENED STATUTORY PERIOD FO MAILING DATE OF THIS COMMUNIC nsions of time may be available under the provisions of SIX (6) MONTHS from the mailing date of this communication of the provision of period for reply specified above is less than thirty (30) period for reply is specified above, the maximum stature to reply within the set or extended period for reply wreply received by the Office later than three months after the patent term adjustment. See 37 CFR 1.704(b).	CATION. f 37 CFR 1.136(a). In no endication. days, a reply within the stautory period will apply and will, by statute, cause the ap	vent, however, may a nature, may a nature, minimum of thir will expire SIX (6) MON plication to become Al	eply be timely filed ty (30) days will be considered timely. ITHS from the mailing date of this communic BANDONED (35 U.S.C. § 133).	cation.			
1)[🖂	Responsive to communication(s) filed	l on <u>25 <i>November 2</i></u>	<u>2003</u> .					
2a)⊠	This action is <b>FINAL</b> . 2b	)☐ This action is r	on-final.					
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Disposit	ion of Claims							
5)⊠ 6)⊠ 7)□	<ul> <li>✓ Claim(s) 1-9 is/are pending in the application.</li> <li>✓ 4a) Of the above claim(s) is/are withdrawn from consideration.</li> <li>✓ Claim(s) 1-3 is/are allowed.</li> <li>✓ Claim(s) 4-9 is/are rejected.</li> <li>☐ Claim(s) is/are objected to.</li> <li>☐ Claim(s) are subject to restriction and/or election requirement.</li> </ul>							
•	ion Papers		·					
10) <u> </u>	The specification is objected to by the The drawing(s) filed on is/are:  Applicant may not request that any object Replacement drawing sheet(s) including to The oath or declaration is objected to	a) accepted or be tion to the drawing(s) the correction is requi	be held in abeyar ired if the drawing	nce. See 37 CFR 1.85(a). (s) is objected to. See 37 CFR 1.1				
•	under 35 U.S.C. §§ 119 and 120			0.440(=) (-1) == (0				
a) 13)□ / s 3 a 14)□ /	Acknowledgment is made of a claim for the priority of the prio	locuments have be locuments have be f the priority documental Bureau (PCT Rustor a list of the ceres domestic priority usin the first sentence guage provisional ar domestic priority using the sentence of the priority of the sentence of th	en received. en received in A nents have been ale 17.2(a)). tified copies not under 35 U.S.C. te of the specific application has b under 35 U.S.C.	received. § 119(e) (to a provisional application or in an Application Data een received. §§ 120 and/or 121 since a spe	ication) Sheet.			
Attachmen	it(s)		_					
2) Notic	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PT mation Disclosure Statement(s) (PTO-1449) Pap		5) Notice of I	Summary (PTO-413) Paper No(s) nformal Patent Application (PTO-152)	<u> </u>			

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#### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mundell, et al (4700697).

Mundell, et al discloses a method to ameliorate sleep apnea including providing a cervical appliance which prevents ventral flexion of the head while maintaining the head in a slightly dorsally flexed position during sleep. Claims 4 and 7, as broadly worded fails to distinguish over the cervical appliance as applied to the patient as disclosed by Mundell, et al. Note, the term "distend" according to the dictionary definition of the same is not limited to the strict meaning as argued by applicant. Clearly the appliance of Mundell, et al is designed to produce a slight dorsal (ie frontal) flexion of the wearer's head sufficiently to increase the oropharyngeal airway (ie alleviating obstruction) to minimize the tendency for apena. If applicant desires to limit the term "distend" to a specific meaning, then applicant is invited to amend the claims to more positively set forth the intended meaning of the term "distend".

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5,6,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mundell, et al (4700697) as applied to claims 4 and 7 above, and further in view of Bancalari (3903869).

Mundell, et al describes one modality for ameliorating sleep apnea. Bancalari teaches a two modality process for combating apnea, including negative pressures to the neck and thoracic region of the body in combination with positive pressure flow through the airway of the patient. In light of Bancalari, to use a positive pressure flow through the airway of the patient in combination with the cervical apparatus of Mundell in order to provide correct neck positioning to ensure an open airway for receipt of positive pressure flow into the airway, would have been obvious to one with ordinary skill in the art.

#### Response to Arguments

Applicant's arguments filed 1/20/04 have been fully considered but they are not persuasive. Contrary to applicant's arguments, the examiner is allowed to render the broadest interpretation of the claims. Importing meaning from the specification, by the Examiner, is not proper. Applicant argues a particular meaning of the term "distend" while the claim is not limited to applicant's chosen meaning. Examiner has interpreted

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the term "distend" broadly while remaining within the confines of the dictionary definition of the term.

Allowable Subject Matter

Claims 1-3 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone

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numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3580 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DAVID J ISABELLA Primary Examiner Art Unit 3738

dji January 21, 2004

# MEDSTERS I New Riverside University Dictionary

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Manufactured in the United States of America

xical and Elect

Signo ar

ciated : SEPARABLE. -dis-so/cia-bil'i-ty, dis-so-cia-ble (di-so'sha-bal, -she-a-bal) adi. Capable of being dissolis-so cia-bly adv. dis-so'cia-ble-ness . n.

dis tant (dis tent) adj. [ME distaunt < OFr. < Lat. distants/pag

of distare, to be remote :: dis-, apart + stare, to stand.] L Apar

2. Far removed in space or time.

distant future > 3. Located at, coming from, or going to a dist

<a href="mailto:</a> distant cousin>5:0</a>

separate in space or time.

dis-so-ci-ate (di-sō/shē-āt/, .-sē-) v. -at-ed, -at-ing, -ates. [Lat. disassociating: PART. 2. Chem. To undergo dissociation. -dis-so'cl-a'-Hook > 2. Chem. To cause to undergo dissociation. —vi. 1. To cease panion. sociare, dissociat-: dissociated man from his social environment. - Sidney -vt. 1. To remove from association : SEPARATE <"Marx dis- (reversal) + sociare, to unite < socius, com-

dis-so-ci-a-tion (di-so'st-a'shan, -she-) n. 1. The act of dissociating change in physical condition, as in temperature or pressure, or the as in the generation of multiple personalities. of atoms, single atoms, or ions. b. The separation of an electrolyte or state of being dissociated. 2. Chem. a. The process by which action of a solvent causes a molecule to split into less complex groups into ions of opposite sign. 3. Psychiat. The separation of a group of psychological activities into autonomously functioning units,

dis-sol·u-ble (dī-sol'yə-bəl) adi. [Lat. dissolubilis < dissolvere, dissolve.] Capable of being dissolved -dis'sol·u·bil'i·ty, dis-sol'u-

dis-so-lute (dis'a-loot') adj. [ME < Lat. dissolutus, p.part. of dissolvere, to dissolve.] Lacking moral restraint: PROFLIGATE. -dis/solute'ly adv. —dis'so lute'ness n.

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ture. 7. Reduction to a liquid form. —dis'so-lu'tive adi.
dis-solve (di-zôlv') v. -solved, -solving, -solves. [ME dissolven dis-so-lu-tion (dis's-166'shen) nent parts: DECOMPOSITION. 2. Lack of moral restraint. 3. Termination or extinction by deconcentration or dispersion. 4. Death. tract. 6. Formal adjournment or dismissal of an assembly or legisla-5. Annulment or termination of a formal or legal bond, tie, or con-1. Disintegration into compo-

duce to liquid form: MELT. 3. To cause to disappear: DISPEL. 4. To separate into component parts: DISINTEGRATE. 5. To bring to an end < Lat. dissolvere: dis, apart + solvere, to release.] -vt. 1. To cause to pass into solution < dissolve instant coffee in water> 2. To rescene transition in a motion-picture film of videotape made by dis-solving, —dis-solve; ble adi. —dis-solver n next appears behind it and grows clearer as the first dims. -n. A tion-picture film or videotape by having one scene fade out while the Fiedler > 9. Law. To render null: ABROCATE. -vi. 1. To pass into bly or legislature) 7. To affect emotionally. 8. To cause to lose defi-nition: BLUR <"Morality has finally been dissolved in pity"—Leslie by or as if by breaking up: TERMINATE. 6. To dismiss (e.g., an assemlose definition or clarity: fade away. 7. To shift scenes in a motegrated 2. To melt. 3. To disperse or break up. 4. To become disin-5. To be moved emotionally <a href="mailto:sixvolved">dissolved</a> in tears > 6. To

agreement: CONFLICT. 3. Mus. A combination of tones conventionally held to suggest unrelieved tension and to require resolution. dis: sornant (dis's-nont) adi. [ME dissonant COFt. dissonant dis so nance (dis enens) also dis so nan cy (-nen se) n. 1. A dis-sol-vent (di-zol'vent) n. A solvent. -dis-sol'vent adi. harsh or unpleasant combination of sounds: DISCORD. 2 Lack of sonance. -dis so nantily adv. 2. Disagreeing: conflicting 3. Mus. Constituting or producing a dis-Lat. dissonans, pr part. of dissonare, to be dissonant: dis-, apart + sonare, to sound.] I. Harsh or unpleasant in sound: DISCORDANT.

dis-suade (di-swad') vt. -suad-ed, -suad-ing, -suades. [Lat. dis from a course of action or intention by exhortation or persuasion suadere: dis- (reversal) + suadere, to advise.] To discourage or deter

dis-sua-sion (di-swa'zhan) n. [Lat. dissuasio < dissuadere, to dis dis-syl·la·ble (di-sil'a-bal, dis'sil-, di'sil'-) n. var. of DISYLLABLE. suade.] The act or an instance of dissuading. -dissua'sive ad -dis-sua'sive-ly adv. -dis-sua'sive-ness n.

dis-taff (dis'taf') n. lis-sym-me-try (dis-sim'i-trè) n., pl. -tries. Lack of symmetry.
-dis-sym-metric (di'si-mëtrik), dis-sym-metri-cal adi. -dis-[ME distaf < OE distaf : dis., bunch of flax +

dis-sym-me-try (dis-sim'i-trê) n.,

**distaff side** n. The maternal branch or female side of a family. **dis-tal** (dis'tal) adi. [DIST(ANT) + AL.] Anat. Located far from the stæf, staff.] 1. A staff having a cleft end that holds the unspun flax, wool, or tow from which thread is drawn in spinning by hand. 2. A n's work and domain. 3. Women as a group line of attachment, as a bone. -dis tal-ly adv.

dis-tem-per<sup>1</sup> (dis-tem par) n. [ME distemperen, to upset the ance of the humors < Ofr. destemperer < Med. Lat. distempere Lat. dis- (reversal) + Lat. temperare, to temper.] 1. a. An infection fensive < distasteful magazines> 2. Expressing distaste < a distant relating to mental distance or absent-mindedness <a distant diseases. 2. Bad temper: PEEVISHINESS. 3. Social or political disquent partial paralysis and death. b. Any of various similar mamm of appetite, a catarrhal discharge from the eyes and nose, and virus disease occurring in certain mammals, esp. dogs, marked by ful glare > -dis-taste fully adv. dis taste ful ness n

\_vt. -pered; -pering, -pers. To upset.
dis-tem-per² (dis-tem-pər) n. [ME distemperen, to dilute:<! dis-tend (di-srènd') v -tend-ed, -tend-ing, -tends. [ME diag den < lat. distendere : dis- apart + tendere, to stretch.] -ring b. The paint used in distemper. 2. A painting done in distemper. vt. -pered, -pering, -pers. I. To mix (powdered pigments or ons) with water and size. 2. To paint in distemper. swell out or expand from or as if from internal pressure. binder, used for flat wall decoration or for scenic and poster pain which pigments are mixed with water and a glue-size or cast Lat distemperare. —see DISTEMPER! ] 1. a. A process of paintin 1

dis-ten-si-ble (di-sten'sa-bal) adj. Capable of being disten cause to expand by or as if by internal pressure: DILATE. 2. To su out in all directions: EXTEND

dis-ti-chous (dis'ti-kas) adj. [Llat. distichus, having two.tw Gk. distikhos.—see DISTICH.]-Arranged in two vertical rows of on opposite sides of an axis.—Used of leaves.—dis'ti-chousity distich (distik) n. pl. tichs. [Lat. distichon < Gk. distikhos having two rows or verses : dl., two + stikhos lin distention also distention (distention) n. [ME:tistention] n. [ME:tistention] sioun < Lat. distentio < distentus, p.part. of distendere, to distente The act of distending or state of being distended. verse. A verse couplet, esp. one used in a Latin or Greek eeg

by distillation. 4. To separate or extract the essence of <a href="essence of a film">distillation or be produced by distillation. 2. To fall or exude indundance or be produced by distillation. 2. To fall or exude industrial. stilla, drop. J extract (a distillate) by distillation. 3. To refine or purify by or distiller < Lat. destillare, to trickle : distill'a ble adi -vt. 1. To subject (a substance) to distillation. de-, down + stillare, to.d

processes used to purify or separate a fraction of a relatively commixture or substance, esp. the vaporization of a liquid mixture. densation. 2 A distillate. subsequent collection of components by differential cooling to

distillation column n. A tall cylindrical metal shell inte miscible liquids ascending in the shell as vapor.

dis-till-er (di-stil'ar) n. 1. One that distills, as a condense. titted with perforated horizontal plates used to promote separat

one thing from another. 2. Easily perceived: CLEAR <a distinc

3. Unquestionable : decid

decided

<a distinct

dis:tinc:tive (di-stingk'tiv) adj. 1. Serving to identify or set apart typical < distinctive regional cuisine > 3. Phonemically relevant DISTINGUISHING < distinctive cattle brands > 2. Characteristic distinc'tive ly adv. . distinc'tiveness n.

distinguer, to distinguish < OFr.] Distinguished in appearance, man

neg or demeanor. dis tinguish (disting gwish) v. -guished, -guishing, -guish G. [< ME distinguen < OFr. distinguer < Lat. distinguere, to separate.] — vr. 1. To recognize as being different or distinct. 2. a. To</p> vi. To perceive or indicate differences: DISCRIMINATE. —die-tin self) to be eminent or recognized < distinguish oneself as a scholar > SET APART. C. To indicate as separate or different. 4. To cause (one 3. a. To separate into different categories. b. perceive distinctly < distinguish a light in the window > b. To pick DISCERN < distinguished my child's voice in the chorus To make noticeable

2. Dignified in appearance or deportment

tion awarded for distinguished conduct in the field.

Distinguished Flying Cross n. 1, A U.S. military decoration

Rextraordinary achievement.

Distinguished Service Cross n. 1. A U.S. Army decoration 2. A British decoration awarded to officers of the Royal Air Force fo awarded for heroism or extraordinary achievement in aenal combai

ecoration awarded ion awarded for distinguished performance of duty. 2. A Britis EDUATION AWATGED TO NONCOMMISSIONED OFFICERS AND ENLISTED PERSONNEL! IN, the Royal Navy and Royal Matines for distinguished confirm way.

dis-till (distil) v -tilled, -tilling, -tills. [ME distillen ] **dis-til** (dĭ-stĭl') v. Chiefly Brit. var. of DISTILL

dis-til·la-tion (dis'ta-la'shan) n. 1. Any of various heat-deper distil·late (dista-lat', lit, distil'ît) n. 1. The liquid condi from vapor in distillation. 2. An essence or purified form.

maker of alcoholic liquors by distillation.

dis-till-ery (distill-re) n., pl. -ies. A plant or establishmen

dis-tinct (di-stingkt') adj. [ME < OFr. < Lat. distinctus, p.pai characteristic or property is distinctive if it enables us to disting VIDUAL < met us on three distinct days > usage: Something tinct if it is sharply distinguished or set apart from other thin distinguere, to distinguish.] I. Distinguished from all others distilling, esp. alcoholic liquors.

> (dēs'tāng-gā', di-stang ga) ad). [Fr., p.part.

guish-a-ble adi. —dis-tin'guish-a-bly adv

Distinguished Conduct Medal n. A British military decor. distin:guished (disting gwisht) adj. 1. Marked by excellence

warded for exceptional heroism in combat. 2 A. British decoration was deficient of the Royal Navy for bravery in action. Distinguished Service Medal n. 1. A U.S. military decorations.

Distinguished Service Order n. A British military decon

The object of the condition of being distorted. 3. To cause to function in a twisted or disorder way: PERVERI.—distorter. In 1. The act or an instance of distorter. In 1. The act or an instance of distorter. In 1. The cause of the condition of being distorted. 3. A factual misrepresent in 1. non awarded for bravery in action.

(distort (distort) vt. torted, torting, torts. [lat. distorquen dis-, apart + torquere, to twist. ] 1. To twist out of prope

ing. 2. The condition of being distorted. 3. A factual misrepresent 10m. 4. A distorted image caused by imperfections in an optic object, as a lens. 5. Electron. a. An undesired change in the way faming a signal. b. A consequence of such a change, esp. diminishe danty-in reproduction or reception. 6. Psychoanal. The modific upon of unconscious impulses into forms acceptable by conscious offeaming perception. —dis-tortional adj. distract. (distrakt.) vt. -tract-ed. -trac-ting. -traces. [ME distract.] At. distractus, p.part. of distrahers, to pull away: distraction, purpose of the production of the pr

Divinis. —dis-tractingly adv.—dis-tractive adj.
dis-tracted (di-sriak'tid) adj. I. Having the attention diverte Chistrapht.—dis-tractedly adv.
dis-tracter also dis-tractedly adv. 2: An incorrect answer presented as a choice in a mul

DIVERSION. 3. Mental or emotional confusion or di distractor. (di-strāk/tar) n. var. of DISTRACTER. distraction (distrak'shan) n. 1. The act of distracting or state bing distracted. 2. Something that distracts, esp. an amusement or disturbance.

distrain (di stran') v. -trained, -training, -trains. [ME distr nen OFr. destreindre, to seize, compel < Med. Lat. distringere. Lat., inchinder : dis-, apart + stringere, to draw tight.] Law. — v debts:DISTRESS. —vi. To levy a distress. —distrain'a ble adi. debts. 2. To seize the property of in order to compel payment lifo seize and hold (property) to compel reparation or payment

Criner dis trai nor n. —dis train ment n. distraint (di-strant') n. [< DISTRAIN.] Law. The act or process uning: DISTRESS

distrait (di-stra') adj. [Fr. < Lat. distractus. -see DISTRACT.]

gattentive or absent-minded, esp. due to anxiety adia-travierht. (di-strar) adi. fME alteration of of distract, perset